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15 ATTORNEYS FOR PLAINTIFFS

16 **UNITED STATES DISTRICT COURT**  
17 **CENTRAL DISTRICT OF CALIFORNIA**  
18 **WESTERN DIVISION**

19 MICHAEL SPIELMAN and  
20 LORETTA SPIELMAN,

21 Plaintiffs,

22 vs.

23 PAUL H. GESSWEIN CO., INC.,

24 Defendant.

) CIVIL ACTION NO. \_\_\_\_\_

)

)

) **PLAINTIFFS' COMPLAINT FOR**  
) **BREACH OF CONTRACT**

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**I.  
INTRODUCTION**

1. Plaintiffs Michael and Loretta Spielman bring this action as a result of the breach of the binding contract between Mr. and Mrs. Spielman (“Plaintiffs” or “the Spielmans”) and Defendant Paul H. Gesswein Co., Inc. (“Defendant” or “Gesswein”). Mr. Spielman is terminally ill. His fatal disease was caused by Gesswein. Accordingly, Mr. Spielman and his wife brought a personal injury action against Gesswein, and it proceeded to trial in the Superior Court of the State of California for Los Angeles County.

2. After a jury was seated and trial began, Gesswein entered into a written contract – a settlement agreement – with Plaintiffs. *See* Exhibit A, April 5, 2017 Settlement Agreement (“Contract”). Based on the Contract the trial was stopped. Pursuant to the Contract, payment of the settlement funds by Gesswein was to be made no later than 30 days after the Plaintiffs returned to Gesswein the properly executed Compromise and Release, in the form attached to the Contract as Exhibit A. The required properly executed Compromise and Release was received by Gesswein on April 12, 2017. *See* Exhibit D, Proof of Federal Express Delivery to Gesswein. Accordingly, the settlement funds were due no later than May 12, 2017. The Contract specifically stated, “No other documents will be necessary to effectuate this settlement.” Exhibit A at 1. Plaintiffs have fully

1 performed all of their obligations under the Contract. Despite repeated requests  
2 from Plaintiffs' counsel, Gesswein has refused to make payment, in clear and  
3 unequivocal contravention of the Contract.  
4

5 **II.**  
6 **JURISDICTION AND VENUE**

7 3. This Court has subject matter jurisdiction pursuant to 28 U.S.C.  
8 § 1332(a), as there is complete diversity of citizenship between the parties, and  
9 the amount in controversy exceeds \$75,000, exclusive of interest and costs.  
10

11 4. Venue is proper in this District pursuant to 28 U.S.C. § 1391, as a  
12 substantial part of the acts or omissions giving rise to Mr. and Mrs. Spielman's  
13 claims arose in this District, namely the negotiations leading to and the execution  
14 of the Contract.  
15

16 5. Further, the Contract provides that the agreement shall be  
17 enforceable under California law. Exhibit A to Exhibit A, Compromise and  
18 Release ("Release") at ¶ 5, subp. h.  
19

20 6. Finally, Defendant maintains sufficient minimum contacts with the  
21 State of California, including but not limited to conducting business in the State of  
22 California through sales of its products, advertising in the State of California, and  
23 ultimately entering into an agreement with California residents Mr. and Mrs.  
24  
25  
26  
27

1 Spielman, such that an exercise of jurisdiction over Defendant does not offend  
2 traditional notions of fair play and substantial justice.

3  
4 **III.**  
5 **PARTIES**

6 7. Plaintiff Michael Spielman is an individual who is a citizen of the  
7 State of California and resides in Los Angeles County, California.

8 8. Plaintiff Loretta Spielman is an individual who a citizen of the State  
9 of California and resides in Los Angeles County, California.

10 9. Defendant Paul H. Gesswein Co., Inc. is a Connecticut corporation  
11 with its principal place of business in Connecticut.

12  
13 **IV.**  
14 **STATEMENT OF FACTS**

15 10. Mr. Spielman is dying from a terminal cancer caused by Defendant.

16 11. Accordingly, Mr. and Mrs. Spielman brought an action for personal  
17 injuries against Gesswein in the Superior Court of the State of California for Los  
18 Angeles County for damages arising from injuries to Mr. and Mrs. Spielman  
19 caused by Gesswein.  
20

21 12. On April 5, 2017, following two days of jury selection and after the  
22 jury was seated, the parties reached a written contract to resolve the claims  
23 between them. *See* Exhibit A.  
24  
25  
26

1           13. Specifically, Gesswein induced the Spielmans to release all personal  
2 injury claims, all loss of consortium claims, and all wrongful death and survival  
3 claims in exchange for a monetary sum. *See* Exhibit A.  
4

5           14. Pursuant to the Contract, payment of the settlement amount was to be  
6 made no later than 30 days after the Plaintiffs returned to Gesswein the properly  
7 executed Compromise and Release. *See* Exhibit A at 1.  
8

9           15. Plaintiffs sent the properly executed Compromise and Release via  
10 Federal Express to Mr. Kaniewski's office on April 11, 2017. *See* Exhibit B,  
11 executed Compromise and Release; Exhibit C, April 11, 2017 Letter from Rachel  
12 Casias to John A. Kaniewski enclosing the executed Compromise and Release;  
13 Exhibit D, Proof of Federal Express Delivery to Gesswein.  
14

15           16. The Contract states that it is enforceable pursuant to Section 664.6 of  
16 the California Code of Civil Procedure and that a prevailing party in any action to  
17 enforce the agreement "shall" be entitled to recover actual attorneys' fees and  
18 costs incurred in enforcing the Contract. Exhibit A to Exhibit A, Compromise and  
19 Release at ¶ 5, subp. h (emphasis added).  
20  
21

22           17. Gesswein still has not paid Mr. and Mrs. Spielman any of the sum  
23 owed to them whatsoever.  
24

25           18. Counsel for Plaintiffs has made nearly daily request for payment.  
26





- 1 3. Pre-judgment interest on the overdue settlement sum from and after May
- 2 12, 2017;
- 3
- 4 4. Post-judgment interest; and
- 5 5. Any further relief to which Plaintiffs may be entitled.

6 **Dated:** May 30, 2017

Respectfully Submitted,

8 By: /s/ Paul R. Kiesel  
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